

C O P Y

TOTTEN, ADMINISTRATOR v. U.S., 92 U.S. 105

This case involved services alleged to have been rendered by one William A. Lloyd under a contract with President Lincoln. The services include the travel behind the Confederate lines with the purpose of ascertaining the number and disposition of Confederate troops, plans of Confederate fortifications, etc., and reporting thereon to the Union authorities. The Court of Claims found that the services were rendered as alleged and that Lloyd was only reimbursed for his expenses. The Supreme Court says in part (p. 106):

A "The service stipulated by the contract was a secret service; the information sought was to be obtained clandestinely, and was to be communicated privately; the employment and the service were to be equally concealed. Both employee and agent must have understood that the lips of the other were to be forever sealed respecting the relation of either to the matter. The condition of the engagement was implied from the nature of the employment, and is implied in all secret employments of the government in time of war, or upon matters affecting our foreign relations, where a disclosure of the service might compromise or embarrass our government in its public duties, or endanger the person or injure the character of the agent."

The Court went on to say that secrecy was a condition of the agreement and that the disclosure of the agreement necessary to maintenance of the action defeated recovery. The opinion continues (p. 107):

B "It may be stated as a general principle, that public policy forbids the maintenance of any suit in a court of justice, the trial of which would inevitably lead to the disclosure of matters which the law regards as confidential, and respecting which it will not allow the confidence to be violated. On this principle, suits cannot be maintained which would require a disclosure of the confidences of the confessional, or those between husband and wife, or of communications by a client to his counsel for professional advice or of a patient to his physician for a similar purpose. Much greater reason exists for the application of the principle to cases of contract for secret services with the government, as the existence of a contract of that kind is itself a fact not to be disclosed."

DE ARNAUD v. U.S., 151 US. 483

This was an appeal from a Court of Claims judgment dismissing a complaint in which \$100,000 was sought for services rendered by De Arnaud as a "military expert" employed for "special and important duties" by General Fremont for and in behalf of the

De Arnaud was a Russian, resident in the United States. He had been a Lieutenant of Engineers in the Russian Army. In 1861 Fremont employed him to pass through the enemy lines, observe battle order, and report back. His mission was successful and he brought back information which resulted in the saving of Paducah, Kentucky. He was paid \$600 for his services on a receipt marked "for secret service". Later he filed a claim of \$3600 "for special services rendered to the United States Government in traveling through the rebel parts of Kentucky, Tennessee, etc., and procuring information concerning the enemy's movements, etc., which led to successful results." His claim was supported by certificates from Generals Grant and Fremont, and President Lincoln ordered the claim paid if just and equitable. The Secretary of War paid De Arnaud \$2000 which he received under protest, although he signed a receipt acknowledging payment in full.

On appeal De Arnaud attempted to distinguish from Totten case by claiming his functions were not those of a spy and were those of a "military expert". The Court said that there was no difference between the two cases, without going into the point at any length. The Court held that the receipt signed by De Arnaud operated to bar any further demand. Included in the opinion is a quote (p. 490) from the report to the auditor to the Second Comptroller:

"Accounting officers have no jurisdiction to open up a settlement made by the War Department from secret service funds and determine unliquidated damages."

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